KALIAPERUMAL PACKIRISAMY DHARMALINGAM v. MOHD FAIZAL MISKAM & ORS

HIGH COURT MALAYA, SHAH ALAM
AKHTAR TAHIR J
[CIVIL SUIT NO: 22NCVC-181-04-2014]
10 JUNE 2015

CONTRACT: *Damages – Sale and purchase of property – Power of attorney – Validity of – Whether sale and purchase agreement executed based on power of attorney granted to seventh defendant – Whether power of attorney duly executed and authenticated in accordance with Powers of Attorney Act 1949 – Whether validly executed and attested – Whether signatures in power of attorney verified – Whether a forged document – Effect of invalid power of attorney on sale and purchase agreement – Whether void for illegality – Whether plaintiff could claim damages from parties who did not benefit from sale of property – Contracts Act 1950, ss. 24 & 66*

CONTRACT: *Illegality – Void contract – Sale and purchase agreement – Sale of property based on forged power of attorney – Whether sale and purchase agreement void for illegality – Whether contract enforceable – Whether parties benefited from void agreement – Whether plaintiff succeeded in claiming damages – Whether deposit returned to plaintiff – Contracts Act 1950, s. 24*

CONTRACT: *Termination – Sale and purchase agreement – Void agreement – Sale of property based on forged power of attorney – Whether plaintiff entitled to seek damages – Whether parties benefited from void agreement – Whether plaintiff succeeded in claiming damages – Contracts Act 1950, ss. 24 & 66*

EVIDENCE: *Documentary evidence – Power of attorney – Validity of – Whether admissible – Forgery of document – Sale of property based on power of attorney – Whether sale and purchase agreement enforceable – Powers of Attorney Act 1949, s. 3*

The present suit had been consolidated with suit 22NCVC-368-07-2014 ('suit 368') since they revolved around common issues. The plaintiff purchased a land ('the property') from the seventh defendant ('D7'), who was purportedly granted a power of attorney by the first to the sixth defendants ('D1-D6') to be their attorney in respect of the property. D1-D6 were the owners of the property at the material time. In suit 368, the plaintiffs were D1-D6 and the defendants were D7 and the lawyer who had purportedly attested the signatures of D1-D6 in the power of attorney. The facts revealed that the plaintiff entered into a sale and purchase agreement ('S&P') with D7, as attorney for D1-D6 whereby the plaintiff agreed to purchase the property for RM2,634,036 and paid a deposit of RM263,403 to D7's solicitor. Since one of the land owners was a deceased, D7 had to obtain the grant of probate and a court order to sell and transfer the property. The plaintiff's solicitors found out that the grant of probate had

already been issued and D7's solicitors sought to terminate the S&P on the basis that D1-D6 claimed that they did not sign the power of attorney appointing D7 as their attorney. D7's solicitor returned the deposit back to the plaintiff since D7 refused to proceed with the sale transaction. Subsequently, D1-D6 transferred the property to a third party for a consideration of RM4,000,000. The plaintiff, however, sought damages for the termination of the S&P and for the loss of value of the said land. On the other hand, D1-D6 submitted that they had never appointed D7 as their attorney in respect of the land and did not have any knowledge of the S&P. It was also argued that D1-D6 had only executed the power of attorney appointing one Haji Talib as their attorney. Further, it was argued that D1-D6 had paid RM788,049 to D7 to withdraw his caveat in order to avoid any risk when the property was transferred to a third party. As a result, D1-D6 filed suit 368 against D7 and the lawyer where they sought for a declaration to (i) invalidate the power of attorney; (ii) indemnify the plaintiff for any losses suffered as a result of the wrongful power of attorney; and (iii) return RM788,049 received by D7 for the purpose of the removal of the caveat. D7 submitted that before the existence of the power of attorney, he was the rightful owner of the property and had purchased the said property from Aghniyak Builders Sdn Bhd through a lawyer known as Pathmanabhan ('Pathma'). D7 purchased the property for the consideration of RM1,500,000 but had only paid an amount of RM55,000 through his solicitor, Messrs Selva & Co. D7 claimed that he was appointed as attorney on behalf of D1-D6 and lawyer Pathma had endorsed on the said power of attorney that a lawyer named Salvaraju had attested the signatures of D1-D6. The issues that arose for consideration were (a) whether the power of attorney was a valid document; (b) whether the S&P between the plaintiff and D7 could be enforceable if the power of attorney was not valid; and (c) whether D1-D6 was entitled to be refunded the sum of money paid to D7 for removing the caveat lodged by the latter.

Held (dismissing plaintiff's claim):

(1) The essential elements to determine the validity of the power of attorney are as specified under the Powers of Attorney Act 1949. It was apparent from the evidence of D7 that he did not know D1-D6 personally. The power of attorney which contained the signatures of D1-D6 was given to D7 by lawyer Pathma. D7 did not obtain any verification or confirmation from D1-D6 as to whether the signatures in the power of attorney belonged to them. (paras 21, 24 & 25)

(2) D7's explanation that he had an understanding with lawyer Pathma to pay the balance purchase price once he managed to sell the land could not be verified since lawyer Pathma was not called as a witness. Further, Salvaraju did not make any attempt to obtain confirmation from D1-D6 as to whether the signatures in the power of attorney

belonged to them. The excuse given by Salvaraju in agreeing to this false endorsement was to oblige lawyer Pathma who was a friend. This excuse remained as hearsay since lawyer Pathma was not called to testify. (paras 26 & 27)

(3) The testimony of the witnesses who had testified on behalf of D1-D6 was convincing and consistent to show that they did not execute the power of attorney in favour of D7. Based on the analysis of the expert witness, the sample signatures of D1-D6 against the signatures on the power of attorney were not those of D1-D6 and were therefore forged. There were fundamental, significant and consistent differences in the handwriting characteristics between the disputed signatures of the donors in the power of attorney and the specimen signature provided to the expert witness. (paras 28, 33 & 35)

(4) The power of attorney was a forged document. Based on their demeanour, the representatives of D1-D6 and Haji Talib were honest witnesses. D1-D6 were not in any way driven by greed in their transactions of the said property. There were honourable people who would not stoop so low as to deny signing the power of attorney to gain monetary benefits. D1-D6 did not specifically plead fraud or forgery or particularised them. However, the facts in the pleading were sufficient to convey their contention that they did not sign the power of attorney. (paras 37, 40 & 41)

(5) A contract that was tainted with illegality since it was forbidden and went against the law could not be enforceable. In the first place, it was void and neither party could benefit from the void agreement. On the facts, the S&P was void for illegality since it was based on the power of attorney. The power of attorney was in breach of s. 3 of the Powers of Attorney Act 1949. The object of the S&P itself, according to s. 24 of the Contracts Act 1950 was unlawful and void since it was forbidden as against the law. (paras 43, 45 & 46)

(6) Based on s. 66 of the Contracts Act 1950, the plaintiff could not seek any remedy from D1-D6 as a result of the void agreement since the latter had not benefitted in any way from the S&P between the plaintiff and D7. However, the plaintiff could claim the return of the deposit paid for the sum of RM263,403 from D7 but evidence showed that the said amount had been returned to the plaintiff through his solicitor. (paras 47, 49 & 50)

(7) D7 received a sum of RM788,049 from D1-D6 as a result of the private caveat entered by D7 on the said property. The money was given to D7 under coercion and a mistaken belief that it might affect the sale of the land to a third party. D7 was not entitled to the money especially after he became aware that D1-D6 did not sign the power of

attorney. Further, D7 could not be regarded as a *bona fide* purchaser for value since he did not pay the full purchase price to lawyer Pathma in relation to the said property. D7 was also duty bound to ascertain the authenticity of the power of attorney. (paras 51, 56 & 57)

(8) The plaintiff's claim against D1-D6 was dismissed with costs of RM25,000. The plaintiff's claim against D7 was dismissed with costs of RM10,000 to be paid by D7 to the plaintiff since D7 had acted dishonestly in not revealing to the plaintiff much earlier about D1-D6's claim over the said property. The claim by D1-D6 in suit 368 was allowed and D7 had to return back the sum of RM788,049 to D1-D6. Each defendant in the suit was directed to pay a cost of RM20,000 to the plaintiff. (para 59)

Case(s) referred to:

Dato' Mokhtar Hashim & Anor v. PP [1983] 2 CLJ 10; [1983] CLJ (Rep) 101 FC ***(refd)***

Dr Shanmuganathan v. Periasamy Sithambaram Pillai [1997] 2 CLJ 153 FC ***(refd)***

Melatrans Sdn Bhd v. Lim Tian Huat & Carah Enterprise Sdn Bhd (Third Party) [2011] 1 LNS 1522 HC ***(refd)***

Legislation referred to:

Contracts Act 1950, ss. 24, 66

Evidence Act 1950, ss. 45, 85

Powers of Attorney Act 1949, s. 3

For the plaintiff - Kanarasan Ghandinesen (Malathi Natarajan with him); M/s Ghandi
For the 1st - 6th defendants - Jude Alexander I Arulandu; M/s Alexander & Partners
For the 7th defendant - Mohd Faidzol Rahimi Ibrahim; M/s Mohd Faidzol Rahimi & Partners

Reported by Kumitha Abd Majid

JUDGMENT

Akhtar Tahir J:

Introduction

[1] The present suit before me, which is suit 22NCVC-181-04-2014 had been consolidated with another suit of 22NCVC-368-07-2014 by a court order dated 5 September 2014.

[2] Both the suits were tried and decided together as they revolved around common issues.

Parties To The Proceedings

[3] Parties to suit 22NCVC-181-04-2014 are as follows:

(a) The plaintiff, who entered into an agreement to purchase the property known as Geran Mukim 1385, Lot 2249, Mukim Teluk Panglima Garang, District of Kuala Langat, State of Selangor ("the said property");

(b) The first to sixth defendants ("D1-6"), who were the land owners of the property at the material time;

(c) The seventh defendant ("D7") who was purportedly granted a power of attorney ("the PA") by D1-6 to be their attorney in respect of the property.

[4] Parties to suit 22NCVC-368-07-2014 were as follows:

(a) The six plaintiffs as the registered owners of the property (D1-6 in the first suit).

(b) The defendants were the D7 of the first suit and the lawyer who had purportedly attested the signatures of the D1-6 on the power of attorney.

The Plaintiff's Claim In Suit 22NCVC181-04-2014

[5] The plaintiff's claim against the defendants in this suit is two-fold, namely for a breach of contract and/or fraud.

[6] The material facts leading to the plaintiff's claim are as follows:

(a) The plaintiff had been introduced to D7 who had held himself to be the lawful attorney of D1-6 in respect of sale and purchase of the said property. The plaintiff wanted to purchase the property.

(b) Therefore in December 2010 the plaintiff and D7, as attorney for D1-6, entered into a sale and purchase agreement ("SPA") whereby the plaintiff agreed to purchase the property for RM2,634,036. Pursuant to the SPA, the plaintiff paid a deposit of RM263,403 to D7's solicitor;

(c) As one of the land owners was a deceased, the SPA stipulated that D7 had to obtain a grant of probate and a court order to sell and transfer the property. Therefore the sale transaction could not proceed until the grant and court order was obtained;

(d) The plaintiff was informed that the application for a grant of probate had been filed and was therefore waiting for the grant to be issued;

(e) However in August 2011 the plaintiff's solicitor found out that the grant of probate had already been issued and informed D7's solicitor. D7's solicitor then sought to terminate the SPA on the basis that D1-6 claimed they did not sign the PA appointing D7 as their attorney;

(f) The plaintiff refused to terminate the SPA. However D7's solicitor sent the deposit paid to the plaintiff's solicitor and then refused to take it back claiming that he has no further dealings with D7. D7 therefore refused to proceed with the sale transaction to the plaintiff;

(g) Subsequently D1-6 transferred the property to a third party. D1-6 therefore prevented the sale transaction to the plaintiff from proceeding;

(h) The plaintiff had at all material times wanted to proceed with the sale transaction and wanted to file a legal action for specific performance. However his solicitors did not act in a timely manner and the opportunity was lost as the property has been transferred to a third party;

(i) It is now known that D1-6 sold the property to a third party for a consideration of RM4,000,000.

(j) The plaintiff is therefore seeking damages for the termination of the sale and purchase agreement and for the loss of value of the said land.

1-6 Defendants' Defense In Both Suits

[7] First to sixth defendants had never appointed D7 as their attorney in respect of the said land.

[8] At that point of time, first to sixth defendants do not know nor have any knowledge of D7.

[9] The first to sixth defendants have never appeared before any solicitors to execute the power of attorney including a solicitor named Salvaraju whom D7 claimed had attested the signature of D1-6 on the said power of attorney.

[10] The power of attorney was fraudulently created by D7 and/or by any other third party without the knowledge of first to sixth defendants, hence invalid in law and facts.

[11] At all material time, first to sixth defendants did not have any knowledge of the sale and purchase agreement (SPA) entered between the plaintiff and D7.

[12] Plaintiff's action to enter the SPA based on the power of attorney does not involve or bind the first to sixth defendants and therefore plaintiff does not have any valid claim against first to sixth defendants.

[13] First to sixth defendants had only executed the power of attorney dated 16 June 2004 appointing one Haji Talib as their attorney.

[14] The fact that D1-D6 has agreed to pay D7 a sum of RM788,049 to withdraw his caveat is based on D7's claim that he had purchased the land and was the rightful owner of the property at that point of time. D7 has in fact threatened D1-D6 to ensure the land would not be sold to anyone at any time. The purpose is simply to avoid any risk from the said property being transferred to a third party.

[15] As a result of the above sequence, D1-6 had filed a separate suit against D7 and the lawyer by the name of Salvaraju s/o Kanniah. The claim of the D1-6 in this separate suit apart from asking for a declaration to

invalidate the said power of attorney, was to also compel both the defendants to indemnify the plaintiff for any losses he suffered as a result of the wrongful power of attorney and to seek the return of RM788,049 received by D7 for the purpose of the said removal of caveat.

Seventh Defendant's Case

[16] Before the existence of the said power of attorney, D7 was the rightful owner of the property in dispute which he bought from Aghniyak Builders Sdn Bhd (ABSB) through a lawyer known as Pathmanabhan from Messrs Pathma Nalli & Partners for the consideration of RM1,500,000. From the full purchase price, an amount of RM55,000 had been paid by D7 through his solicitor, Messrs Selva & Co.

[17] Instead of being handed over with a sale and purchase agreement as a result of the purchase of the said property in dispute, D7 was later appointed as the power of attorney for and on behalf of D1-6 which he himself had received the power of attorney from a lawyer called Pathmanabhan from Messrs Pathma Nalli & Partners who had endorsed on the said power of attorney that a lawyer named Salvaraju had attested the signature of D1-6.

[18] On 30 December 2010, a sale and purchase agreement was executed between D7 and the plaintiff on behalf of D1-6 with a consideration of RM2,634,036. At the same time, D7 had requested his solicitor from Messrs Selva & Co to file in an application for an order for letters of administration on behalf of one of the beneficiaries who was deceased.

[19] D7 was later informed that the letter of administration had been obtained by another law firm. On further inquiry D7 was informed that D1-6 had denied appointing him through the said power of attorney. As a result D7 terminated the sale and purchase agreement with the plaintiff and returned back to the plaintiff a sum of RM263,403 paid as deposit for the purchase of the said property in dispute.

Issues For Determination

[20] From the perusal and consideration of the above facts as stated in the pleadings, the issues facing the court are as follows:

(a) Whether the power of attorney bestowed upon D7 by D1-6 a valid document.

(b) Could the sale and purchase agreement dated 30 December 2010 entered between the plaintiff and D7 be enforceable if the power of attorney was not valid.

(c) Whether D1-6 is entitled to be refunded the sum of money paid to the D7 for removing the caveat lodged by D7 who had claimed ownership of the said property.

A **Validity Of The Power Of Attorney Granted Upon D7**

[21] The essential elements to determine the validity of the power of attorney are as specified under the Powers of Attorney Act 1949.

[22] Section 3 of the Powers of Attorney Act 1949 provides as follows:

B 1. Authentication of powers of attorney.

(1) No instrument purporting to create a power of attorney executed after the commencement of this Act shall have any validity to create such power within Peninsular Malaysia unless:

C (a) if executed within Peninsular Malaysia, the instrument is executed before, and is authenticated in the appropriate form set out in the First Schedule hereto by:

(i) a Magistrate;

(ii) a Justice of the Peace;

D (iii) a Land Administrator;

(iv) a Notary Public;

(v) a Commissioner for Oaths;

(vi) an advocate and solicitor; or

E (vii) an officer, acting in the course of his employment, of a company carrying on the business of banking in Peninsular Malaysia and incorporated by or under any written law in force in Peninsular Malaysia;

F (2) Notwithstanding anything to the contrary contained in any written law in force at the commencement of this Act, an instrument purporting to create a power of attorney duly executed and authenticated in accordance with this section shall be deemed to be properly and validly executed and attested for all or any of the purposes for which a power of attorney may be used under any such written law.

G **[23]** Evidence Act 1950 provides as follows:

85. Presumption as to powers of attorney.

The court shall presume that every document purporting to be a power of attorney, and to have been executed before and authenticated by a H Notary Public or Commissioner for Oaths, or any court, Judge, Magistrate, or consular officer of Malaysia was so executed and authenticated.

[24] The essential element in determining the validity of the power of I attorney from the reading of the above provisions is the proper execution and authentication of the power of attorney itself.

[25] Applying the above provision to the case before me it is apparent from the evidence of D7 that he personally did not know D1-6. The power of attorney containing the signatures of D1-6 was given to D7 by lawyer Pathma. D7 did not at any time obtain any verification or confirmation from D1-6 whether the signatures on the said power of attorney belonged to them.

[26] A point vigorously pursued by the plaintiff's counsel was that D7 had obtained the power of attorney from lawyer Pathma despite not paying the full consideration for the land. As an explanation D7 stated that he had an understanding with lawyer Pathma to pay the balance once he managed to sell the land. As lawyer Pathma was not called as a witness in this case this explanation could not be verified.

[27] A critical piece of evidence on the issue of authentication was given by the lawyer who had purportedly attested the signatures of D1-6 on the power of attorney. There was an endorsement on the power of attorney alluding to the fact that the signature of D1-6 was attested by a lawyer by the name of Salvaraju. While testifying in court the lawyer Salvaraju admitted that the endorsement was false as he did not personally witness or attest the signature of D1-6 in the said power of attorney. Salvaraju also made no attempt to obtain confirmation from D1-6 whether the signatures on the power of attorney belonged to them. The excuse of this witness in agreeing to this false endorsement was to oblige lawyer Pathma who was a friend. This excuse remains hearsay as lawyer Pathma was not called to testify.

[28] The testimony of the witnesses testifying on behalf of D1-6 was convincing and consistent and it showed that they had at no time to execute the power of attorney in favour of D7. The only person D1-6 had entrusted to deal with their land was a relative by the name of Haji Abdul Talib Bin Jali. Haji Talib through his testimony confirmed that he was the sole representative for D1-6 in respect of the land but he had failed to find a buyer. Haji Talib confirmed that at no time D1-6 had appointed D7 as their representative.

[29] To substantiate the testimony of D1-6 that they had not signed the power of attorney a handwriting expert was called to testify. The calling of the expert witness is allowed by law by virtue of s. 45 of the Evidence Act 1950.

[30] Section 45 of the Evidence Act 1950 states as follows:

> 45. Opinions of experts
>
> (1) When the court has to form an opinion upon a point of foreign law or of science or art, or as to identity or genuineness of handwriting or finger impressions, the opinions upon that point of persons specially

A skilled in that foreign law, science or art, or in questions as to identity or genuineness of handwriting or finger impressions, are relevant facts.

(2) Such persons are called experts.

[31] I further refer to the Federal Court case of *Dr Shanmuganathan v. Periasamy Sithambaram Pillai* [1997] 2 CLJ 153; [1997] 3 MLJ 61 when the court had the following to say with regards to expert evidence:

> The learned judge should have considered the reasoning given by the expert and with that assistance arrived at the conclusion. In failing to do so the learned judge had abdicated his function. The learned judge is entitled to reject the evidence but not before considering such evidence. The evidence of the expert is admissible and relevant to the fact in issue properly placed before the learned judge. The learned judge ought to consider all such evidence that is before him prior to arriving at a finding on the issue. Only after such due consideration been given could he come to a finding. In the case before us, the learned judge did not consider the evidence of PW1 at all. The learned judge did not determine the issue of the forgery. However, since the evidence is before us, we have taken the opportunity of comparing the signatures with the assistance of the explanation given by PW1 in his evidence. We are satisfied that there are fundamental differences between the disputed and admitted signatures. These differences are of vital importance.

[32] In another Federal Court's case of the *Dato' Mokhtar Hashim & Anor v. PP* [1983] 2 CLJ 10; [1983] CLJ (Rep) 101; [1983] 2 MLJ 232 at p. 255, Hashim Yeop Sani J (as he then was) held:

> The opinion of witnesses possessing peculiar skills is admissible whenever the subject matter of enquiry is such that inexperienced persons are unlikely to prove capable of forming a correct judgment without the assistance of an expert. Thus the opinion of these skilled witnesses is admissible in evidence including where the opinions rest on the personal observations of the witnesses themselves and on the facts within their knowledge. To qualify to give such evidence the witness must satisfy the court that he is indeed an expert that he is specially skilled in the field of the enquiry carried out by him. An expert is one who is skilled in any particular art, trade or profession being possessed of particular knowledge concerning the same. The witness must have made a special study of the subject or have acquired special experience on the subject.

[33] Based on his analysis of the sample signatures of D1-6 against the signatures on the power of attorney the expert testified that the signatures on the power of attorney were not those of D1-6 and were therefore forged.

[34] The expert contended that though disputed signature and specimen signature may have a similar design yet the authenticity of a signature can still be determined by comparison method of analysis which he did herein.

[35] During the giving of testimony before the court, the expert arrived at findings that there were fundamental, significant and consistent differences in handwriting characteristics between the disputed signatures of donors in the power of attorney and the specimen signatures provided to him.

[36] I accepted the expert's evidence despite there being challenges by the plaintiff's counsel against his expertise and methods of analysing. I regarded the challenges as not sustainable in the light of the detailed explanation given by the expert as to the method used.

[37] In accepting the evidence of the expert and the oral testimony of the witnesses in favour of D1-6 in my mind it was proven with a certain degree of conclusiveness and on a burden that could be said beyond reasonable doubt that the D1-6 did not sign the power of attorney in favour of D7. In other words the power of attorney was a forged document.

[38] For purposes of completeness I will now address the contention of the plaintiff's counsel that D1-6 had in fact signed the power of attorney in favour of D7 and were now purposely denying it. The main reason for this contention was the fact that D1-6 had paid off D7 a sum of about RM800,000 to remove the caveat lodged by D7. The plaintiff questioned why the need to pay of such a sum if D1-6 claimed that they had not executed the power of attorney. It was insinuated that D1-6 denied signing the power of attorney and conspired with D7 in doing so as they had now found a buyer who was willing to pay double for the said land compared to the purchase price agreed with the plaintiff.

[39] D1-6 in their testimony explained that they had paid a sum money to D7 under duress so as not to endanger the sale of the land to a third party who was willing to purchase the land for a sum of RM4 million. They had negotiated with D7 through Haji Talib to reach an amicable solution so as not to disrupt the sale. D1-6 also flatly denied the suggestion that they paid the sum as they had found a buyer who was willing to pay a higher price for the said property compared to the buyer found by D7.

[40] On this issue after hearing the testimony of the witnesses and studying their demeanour I found the representative of D1-6 who testified in court and Haji Talib to be honest witnesses. I saw D1-6 as simple folks who were not in any way driven by greed in their transactions of the said property. I found them to be honourable people who would not stoop so low as to deny signing the power of attorney so as to gain monetary benefits.

[41] My firm finding on this issue was that the power of attorney was forged document. I could not accept the plaintiff's contention that as defendant 1-6 had not pleaded fraud specifically in their pleadings they could not now raise the issue of fraud. On perusing the pleadings I did notice fraud or forgery was not specifically pleaded or particularised however the facts in the pleading were sufficient to convey the contention of D1-6 that they did not sign the power of attorney.

[42] The more important fact however in this case was not so much fraud or forgery but non-compliance of the Powers of Attorney Act 1949 on the matter of execution and authentication of the signatures of D1-6 which still has the same effect, that of nullifying the power of attorney.

The Effect Of The Invalid Power Of Attorney On The Sales And Purchase Agreement Executed Between Plaintiff And D7

[43] As the sale and purchase agreement dated 30 December 2010 between the plaintiff and D7 is clearly based on the said power of attorney dated 15 October 2010, it is my decision that the sale and purchase agreement is void for illegality.

[44] To support my findings, I refer to s. 24 of the Contracts Act 1950 which reads as follows:

> 24. What considerations and objects are lawful, and what not.
>
> The consideration or object of an agreement is lawful, unless:
>
> (a) it is forbidden by a law;
>
> (b) it is of such a nature that, if permitted, it would defeat any law;
>
> ...
>
> (e) the court regards it as immoral, or opposed to public policy.
>
> In each of the above cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.

[45] Relying to the above provision and relating it to the present case before me, the power of attorney is clearly in breach of s. 3 of the Powers of Attorney Act 1949. This means, the object of the sale and purchase agreement itself, according to s. 24 of the Contracts Act 1950 is unlawful and void as it is forbidden as against the law.

[46] Thus, from the clear provision of s. 24 of the Contracts Act 1950 it clearly reflects that a contract that is tainted with illegality due to the fact that it is forbidden and going against the law cannot be made enforceable. In fact, it is void at the first place and neither party can benefit from the said void agreement.

Plaintiff's Remedy As A Result Of The Void Sale And Purchase Agreement

[47] Section 66 of the Contracts Act 1950 has this to say with regards to remedy of a void agreement:

> **66. Obligation of person who has received advantage under void agreement, or contract that becomes void.**
>
> When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under the agreement or contract is bound to restore it, or to make compensation for it, to the person from whom he received it.

[48] A clear explanation of the said provision with regards to remedy of a void agreement had been emphasised in the case of *Melatrans Sdn Bhd v. Lim Tian Huat & Carah Enterprise Sdn Bhd (Third Party)* [2011] 1 LNS 1522; [2011] MLJU 1184:

> In law it is provided that where a contract becomes void any person who has received any advantage under such contract is bound to restore it (s 66 Contracts Act 1950). It is irrelevant whether any party committed any breach of the terms of the contract. Suffice it to say that any monies or advantage received by a party must be restored to the other party (*Ted Bates (M) Sdn Bhd v. Balbir Singh Jholl* [1979] 2 MLJ 257 (FC)). Applying the principles above to the present case, as the SPA has become void the defendant is bound to make full restitution of the Deposit to the plaintiff.

[49] Reading the said provision and decided case before me, it is clear that the plaintiff could not seek any remedy from D1-6 as a result of the said void agreement. This is due to the fact that D1-6 have not benefited in any way from the sales and purchase agreement between the plaintiff and D7.

[50] Against D7 the plaintiff could claim the return of the deposit to the sum of RM263,403 paid to D7 but evidence shows that the amount of RM263,403 had been returned to the plaintiff on 27 February 2012 through his solicitor.

D1-6's Claim Against D7 And Salvaraju

[51] It was not denied by D7 that a payment of RM788,049 had been received from D1-6 as a result of a private caveat entered by D7 on the said disputed property.

[52] During the process of cross-examination of D7, he admitted to the fact that when the first time he met the real representative of D1-6, Haji Abdul Talib bin Jali (the said "Abdul Talib"), D7 did inform Abdul Talib that he is the lawful purchaser of the land pursuant to an option letter shown to the said Abdul Talib.

[53] Abdul Talib had in fact in his testimony said that when he met D7 at his house regarding the caveat entered by D7, D7 had threatened that since he had earlier purchased the land pursuant to the said option letter, he will ensure that the owners will not be able to sell the land to anyone else at any time. D7 only agreed to withdraw the caveat and let off the land if a sum of RM800,000 is paid to him by the owners.

[54] Abdul Talib further testified that he was fearful of the threat by D7 thinking D7 has a valid claim under the said option letter. When the threat was conveyed to D1-6, they were also fearful to take any risk and agreed to pay the said sum under coercion.

[55] D7 denied the said testimony by the said Abdul Talib taking the position that there were never the element of coercion and the sums was handed over to him according to their own free will.

[56] On this issue as I have stated earlier I believed the testimony of D1-6 and Abu Talib and it is my decision that the money was given to D7 under coercion and a mistaken belief that it might affect the sale of the land to a third party. D7 was certainly not entitled to the money especially after he became aware that D1-6 did not sign the power of attorney.

[57] D7 also could not be regarded as *bona fide* purchaser for value. This was because he did not pay the full purchase price to lawyer Pathma. D7 was also duty bound to ascertain the authenticity of the power of attorney.

[58] As D1-6 had paid the money under the mistaken belief that D7 was entitled to the money granted them the right to reclaim the money.

Final Decision Of The Court

[59] After careful consideration of the totality of the evidence in this case I made the following orders:

(a) Plaintiff's claim against D1-6 was dismissed with the costs of RM25,000;

(b) Plaintiff's claim against D7 was dismissed with the costs of RM10,000 to be paid by D7 to the plaintiff as although the plaintiff's claim was dismissed against D7 I felt the plaintiff was entitled to cost as the D7 had acted dishonestly in not revealing to the plaintiff much earlier about the claim D1-6 over the said property.

(c) The claim by D1-6 in suit of 22NCVC-368-07-2014 was allowed and D7 ordered to return back the sum of RM788,049 to D1-6. Each defendant in this suit was directed to pay a cost of RM20,000 to the plaintiff.